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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 150629563-5703-01]

RIN 0648-BF23

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Purse Seine Fishing Restrictions during Closure Periods

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule amends the regulations to remove the restriction that prohibits U.S. purse seine vessels from conducting bunkering (refueling) activities in the U.S. exclusive economic zone (EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), also known as the Effort Limit Area for Purse Seine or ELAPS, when this area is closed to U.S. purse seine fishing. This action would relieve U.S. purse seine vessels from the burden of the prohibition while continuing to satisfy U.S. obligations pursuant to the Western and Central Pacific Fisheries Convention Implementation Act.

DATES: This rule is effective on [*Insert date of publication in the FEDERAL REGISTER*]. Comments must be submitted in writing by [*Insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0098, and the regulatory impact review (RIR) prepared for the interim rule, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0098*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR and the Record of Environmental Consideration prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS PIRO, 808-725-5036.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The Commission includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively “members”). The United States is a Member, and American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States is obligated to implement the decisions of the Commission. The Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*; WCPFC Implementation Act) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United

States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including implementation of the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the Commission Web site at: www.wcpfc.int/doc/convention-area-map.

WCPFC Decision on Tropical Tunas

At its Eleventh Regular Session, in December 2014, the Commission adopted Conservation and Management Measure (CMM) 2014-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2014-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is the immediate successor to CMM 2013-01, adopted in December 2013. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures.

The stated general objective of CMM 2014-01 and several of its predecessor CMMs is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a

minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. CMM 2014-01 includes specific objectives for each of the three stocks; the common objective is that the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2014-01 went into effect February 3, 2015, and is generally applicable for the 2015-2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number of fishing vessels, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers.

The provisions of CMM 2014-01 apply on the high seas and in EEZs in the Convention Area; they do not apply in territorial seas or archipelagic waters.

CMM 2014-01 includes specific fishing effort limits for purse seine vessels.

NMFS Regulations Regarding Purse Seine Fishing Effort Limits

On May 21, 2015, NMFS published an interim rule to establish a limit on fishing effort by U.S. purse seine vessels in the ELAPS for the calendar year 2015 (80 FR 29220), in accordance with the relevant provisions of CMM 2014-01. The limit is 1,828 fishing days, and went into effect on May 21, 2015. NMFS is issuing a final rule that responds to comments on the interim rule issued on May 21, 2015 (see the final rule identified by RIN 0648-BF03), which is being published elsewhere in this issue of the Federal Register.

On June 8, 2015, NMFS determined that the 2015 ELAPS limit was expected to be reached and, in accordance with the procedures established at 50 CFR 300.223, issued a temporary rule announcing that the purse seine fishery in the ELAPS would be closed to fishing by U.S. purse seine vessels starting June 15, 2015, and would remain closed through December 31, 2015 (80 FR 32313).

The regulations at 50 CFR 300.223, promulgated in 2009, specify that once a fishery closure in the ELAPS goes into effect, U.S. fishing vessels equipped with purse seine gear may not be used to fish in the ELAPS during the closure period. Because the definition of fishing, as established in 50 CFR 300.211, specifically includes bunkering, U.S. purse seine vessels under these regulations are prohibited from conducting bunkering operations in the ELAPS. During the closure of the ELAPS, U.S. purse seine vessels are generally allowed to fish in some foreign EEZs pursuant to the South Pacific Tuna Treaty. Information suggests that the U.S. WCPO purse seine fleet conducts about half of all bunkering operations on the high seas in order to support fishing operations in foreign EEZs in the WCPO. Since the regulations at 50 CFR 300.223 prohibit bunkering on the high seas in the WCPO for the remainder of 2015, the vessels are compelled to bunker in foreign waters or ports, which brings additional costs to these businesses. As stated in the RIR, it is difficult to estimate the costs to these businesses of the bunkering prohibition, but considering lost fishing time, transit costs, higher fuel prices, and, in the situation of having to go to port, port-associated costs, it is clear the additional costs could be substantial.

The Action

This interim rule is limited to amending the regulations at 50 CFR 300.223 to

remove the restriction that prohibits U.S. purse seine vessels from conducting bunkering (refueling) activities within the ELAPS after a closure is announced. The regulations at 50 CFR 300.223(a)(3) state that once a fishery closure is announced, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the ELAPS during the period specified in the **Federal Register** notice. This interim final rule amends this paragraph to include language stating that once a fishery closure is announced, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the ELAPS during the period specified, except that such vessels are not prohibited from bunkering in the ELAPS during a fishery closure. U.S. vessels conducting bunkering operations in the ELAPS would still need to comply with all applicable international and Coast Guard regulations concerning ship-to-ship fuel transfers.

This action is consistent with the provisions of CMM 2014-01 regarding purse seine fishing effort limits and is undertaken pursuant to the WCPFC Implementation Act. Although bunkering is included in the general definition of “fishing” because it is an activity that directly supports fishing operations, Commission decisions do not prohibit bunkering after a fishing effort limit is reached, and NMFS believes that a prohibition on bunkering in the ELAPS would have little or no effect on controlling fishing mortality, which is the underlying objective of CMM 2014-01. The costs of the bunkering prohibition outweigh any benefits the prohibition may have. Thus, this action is consistent with the purse seine fishing effort limit provisions of CMM 2014-01, the objective of which is to reduce or maintain the fishing mortality rates of bigeye tuna, yellowfin tuna, and skipjack tuna at levels no greater than the fishing mortality rates associated with maximum sustainable yield.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim rule is consistent with the WCPOFC Implementation Act and other applicable laws.

Administrative Procedure Act (APA)

The Assistant Administrator finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because it would be impracticable and contrary to the public interest. This rule removes a restriction that prohibits U.S. purse seine vessels from conducting bunkering (refueling) activities in the U.S. exclusive economic zone (EEZ) and in certain areas of the high seas. Without the amendments in this interim final rule, vessels would be compelled to bunker in foreign waters or ports, which brings additional costs to these businesses. It is difficult to estimate the costs to these businesses, but it could be substantial due to lost fishing time, transit costs, higher fuel prices, and, in the situation of having to go to port, port-associated costs. If this rule is delayed to allow for prior notice and opportunity for public comment, it could result in substantial economic costs to the regulated community as the bunkering prohibition is currently effective and impacting the regulated community. In addition, continuing this restriction is not necessary to satisfy the obligations of the United States as a member of the Commission.

The Assistant Administrative finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness because the bunkering prohibition is currently effective and impacting the regulated community. If this rule is delayed to allow for a 30-day delay in effectiveness, it could result in substantial economic costs to the regulated community.

In order to avoid the possible economic impacts, this rule needs to be implemented immediately.

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no final regulatory flexibility analysis was required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: August 19, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.223, paragraph (a)(3) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(3) Once a fishery closure is announced pursuant to paragraph (a)(2) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the ELAPS during the period specified in the **Federal Register** notice, except that such vessels are not prohibited from bunkering in the ELAPS during a fishery closure.

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[FR Doc. 2015-20955 Filed: 8/24/2015 08:45 am; Publication Date: 8/25/2015]